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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,662	03/17/2004	Thomas J. Bachinski	77012-325797	2663

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MINNEAPOLIS, MN 55402

EXAMINER
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BARTOSIK, ANTHONY N

ART UNIT	PAPER NUMBER
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3635

NOTIFICATION DATE	DELIVERY MODE
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10/31/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

e-OfficeActionHNI@faegre.com

## Office Action Summary

**Application No.**

10/802,662

**Applicant(s)**

BACHINSKI ET AL.

**Examiner**

Anthony N. Bartosik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>November 22, 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of invention I (claims 1-16 and 22-25) in the reply filed on August 20, 2007 is acknowledged. The traversal is on the ground(s) that no serious burden on the examiner exists. This is not found persuasive because certain limitations of the restricted claims are not found within the elected claims. Furthermore, the limitation of a video device for example, found in claim 17, would be outside of scope of structure found in the elected claims requiring a different search.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Objections***

1. Claim 16 is objected to because of the following informalities: the phrase "including at one pair" appears to be a typographical error. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6 and 12-15 recite the limitation "the signal module." There is insufficient antecedent basis for this limitation in the claim.

4. Claim 3 recites the limitation "display screen." There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1, 3-6, 8-16, 16, and 22-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Lauter et al. (US 7,055,186 B2).**

7. In Re claim 1, Figure 1 and Column 4 of Lauter et al. disclose a decorative surround (22); a display monitor (48) coupled to the surround; and a sound system (52) positioned at least partially within the surround. Examiner notes that the language of the preamble that states “for use with a fireplace” is functional language and therefore not considered a limitation within the claim.

8. In Re claim 3, Figure 1 and Column 4 of Lauter et al. disclose a display monitor (48) that is movable between a display position wherein a display screen (48) of the display monitor (48) is viewable, and a retracted position wherein the display screen is not viewable.

9. In Re claim 4, Figure 1 and Column 4 of Lauter et al. disclose a surround that defines a first cavity (26) sized to receive the sound system (52).

10. In Re claim 5, Figure 1 and Column 4 of Lauter et al. disclose a surround (22) that further includes an access panel (26) sized to cover the at least one cavity. The language "to conceal the sound system" is considered functional language and therefore not limiting.

11. In Re claim 6, Column 4 Line 60 of Lauter et al. discloses a signal module that is a digital video device.

12. In Re claim 8, Figure 1 and Column 4 of Lauter et al. disclose a sound system that includes at least one speaker device (52).

13. In Re claim 9, Figure 1 of Lauter et al. discloses a display monitor (48) that is movable in a vertically upward direction between a generally horizontal retracted position and a generally vertical display position. Examiner notes that the monitor is capable in moving in any direction one would choose to move it. Without further specifics as to the manner and structure in which the monitor is moved Lauter et al. reads on the claimed invention.

14. In Re claim 10, Figure 1 of Lauter et al. discloses a display monitor is movable in a vertically downward direction between a generally horizontal retracted position and a generally vertical display position. Examiner notes that the monitor is capable in moving

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in any direction one would choose to move it. Without further specifics as to the manner and structure in which the monitor is moved Lauter et al. reads on the claimed invention.

15. In Re claim 11, Figure 1 of Lauter et al. discloses a surround that includes a mantel (22) member that extends generally horizontally across a width of the surround, and the display monitor is mounted to the mantel.

16. In Re claim 12, Lauter et al. discloses a surround that defines a cavity sized to enclose the signal module. Examiner notes that the hollow area between molded section of the tub and the panel (20) of Figure 1 defines the limitations of claim 12.

17. In Re claim 13, Lauter et al. discloses a surround that further includes an access panel (left side of Figure 1) configured to cover the cavity to conceal the signal module.

18. In Re claim 14, Column 4 Line 61 of Lauter et al. discloses a display monitor, the sound system, and the signal module are configured for control from a remote location.

19. In Re claim 15, Figure 1 of Lauter et al. discloses a surround that includes a top horizontal member (22) and first and second vertical side members (20), and the display monitor and signal module are mounted in the top member and the sound system is mounted in at least one of the side members.

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20. In Re claim 16, Figure 2 of Lauter et al. disclose a display monitor (48) that is coupled to the surround (22) with a mounting assembly, the mounting assembly including at one pair of linkage members (62) and a biasing member (72).

21. In Re claim 22, Figure 1 and Column 4 of Lauter et al. disclose a decorative surround (22) for a heating appliance; a display screen (48) coupled to the surround and configured to provide a video display in response to a video signal; and a sound system (52) positioned at least partially within a recessed portion (26) of the surround and configured to provide sound in response to an audio signal.

22. In Re claim 23, Figure 1 and Column 4 of Lauter et al. disclose a surround that includes at least one access panel (26) configured to conceal at portion of the sound system from view.

23. In Re claim 24, Figure 1 and Column 4 of Lauter et al. disclose a display screen (48) that is movable between a display position and a concealed position.

24. In Re claim 25, Figure 1 and Column 4 of Lauter et al. disclose a sound system (52) that includes first and second speakers (52), and the surround (22) defines first and second cavities (26) sized to enclose the first and second speakers.

***Claim Rejections - 35 USC § 103***

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. **Claims 2, and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lauter et al. (US 7,055,186 B2).**

27. In Re claim 2, Column 4 Lines of Lauter et al. teaches a signal module, however it does not disclose where it would be placed. It would have been obvious to one skilled in the art at the time of the invention to place a signal module at least partially within the surround to keep it out of sight and to protect it from contact with water from the spa.

28. **Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lauter et al. (US 7,055,186 B2) in view of Chang (US 2004/0090149 A1).**

29. In Re claim 7, Lauter et al. discloses the claimed invention except that the monitor is a LCD screen. Chang teaches a LCD screen used in a pop-up application. It would have been obvious to use a LCD screen in place of a tube screen in order to minimize the amount of space need to house the screen.



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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony N. Bartosik whose telephone number is 571-270-3112. The examiner can normally be reached on M-F 7:30-5:00; E.D.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Richard Chilcot  
Supervisory Patent Examiner  
Art Unit 3635

AB  
10/2007